



The Comptroller General
of the United States

Washington, D.C. 20548

Arsenoff

Decision

Matter of: Systems & Processes Engineering Corp.
File: B-234142
Date: May 10, 1989

DIGEST

1. Protester's disagreement with the agency's evaluation of data as to computer reliability submitted with its proposal in lieu of the type of reliability data which was required by the solicitation does not show that the agency acted unreasonably in downgrading the proposal for failing to provide the required data.
2. Where solicitation provided that personnel qualifications would be evaluated, the agency acted reasonably in assigning risk to the protester's proposal which pledged the use of an "associate staff" without specifically defining the concept and without providing all of the required resumes.
3. Agency properly considered unexplained reductions in protester's final price as an indication that its proposal presented performance risks where the solicitation provided that an analysis of underlying costs would be performed.
4. Where protester, a small business offeror, was downgraded in the evaluation of its proposal the matter did not have to be referred to the Small Business Administration for certificate of competency proceedings even though the factors under which its proposal was evaluated contained elements traditionally related to responsibility.
5. Source selection decision document contained a sufficient justification for the award decision because its rationale was consistent with the evaluation record, it referenced specific criteria under which awardee was rated as technically superior and stated that, while the awardee's price was not the lowest received, its technical superiority justified the higher price.

045391/138611

6. Prejudicial motives will not be attributed to agency officials on the basis of unsupported allegations, inference or supposition.

DECISION

Systems & Processes Engineering Corporation (SPEC) protests the award of a fixed-price contract to Comsystems, a division of Science Applications International Corporation, under request for proposals (RFP) No. F41608-88-R-5375, issued by the Air Force to expand its Comprehensive Engine Management System to provide diagnostics and trend information on four types of aircraft engines. SPEC alleges that the evaluation of proposals and the source selection decision were defective and that the agency was biased against it.

We deny the protest.

FACTS

The RFP was issued on May 17, 1988, with a July 11 closing date. Award was to be made on the basis of the offer providing the best overall value to the government based on three evaluation factors listed in the solicitation in descending order of importance--technical, management and price/cost. The technical factor was divided into 12 subfactors while the management factor was divided into 4 subfactors. Offerors were required to submit prices for the fixed-price contract as well as detailed cost information which was to be examined for completeness, realism and reasonableness.

Five proposals were received. On September 16, the source selection authority (SSA) decided to include all of the offerors in the competitive range for discussions. Written discussions were conducted through the use of deficiency reports (DRs) and clarification requests (CRs). Comsystems, the eventual awardee, was asked to respond to five CRs and seven DRs; the protester, on the other hand, was issued 11 CRs and 66 DRs. Written responses were evaluated between October 14 and November 17. Face-to-face meetings with the offerors were conducted through November 21. On December 2, best and final offers (BAFOs) were requested with a closing date of December 12.

The technical/management BAFOs were then evaluated using a color coding system where blue indicated that a proposal exceeded requirements, green that requirements had been met, yellow that some, but not all, requirements had been

met, and red that the proposal failed to meet the requirements set forth in an evaluation subfactor. Comsystems' proposal was ranked first, having received 11 blue ratings and five green ratings; the evaluators also concluded that its proposal presented no technical risks. On the other hand, SPEC was ranked next to last in their evaluation of the technical and management factors, having received two blue ratings (under subfactors where all offerors were evaluated as exceeding requirements), 11 green ratings and three yellow ratings. The evaluators also noted that the protester's proposal presented risks in three technical subfactors and one management subfactor. The evaluators found that the marginal risks associated with SPEC's initial proposal had been magnified in its BAFO.

The evaluators took no exception to Comsystems' final proposed price of \$14,297,255 and to its underlying cost information. However, they noted that SPEC's final proposed price of \$11,387,918, which was the lowest received, represented a significant decrease from its initial price with an insufficient explanation as to how the reduction would be accomplished; they further found that SPEC's revised price/cost proposal presented an unacceptable performance risk to the government.

The results of the final proposal evaluation were presented to the SSA at a briefing. On January 5, 1989, the SSA issued his source selection decision authorizing an award to Comsystems. Noting that all proposals in the competitive range were "adequate" when measured against the RFP evaluation criteria, the SSA found that Comsystems was technically superior to the rest in terms of such subfactors as reliability, maintainability, producability, software, support and quality assurance. Noting further that Comsystems' proposed price was not the lowest offered, the SSA stated that its "vastly superior technical merits" nonetheless created the lowest risk to successful performance. With respect to the protester's lowest priced proposal, the SSA concluded that it was unacceptable due to its technical inferiority and high risks. On this basis, the SSA concluded that Comsystems' offer presented the Air Force with the best overall value.

Comsystems was awarded a contract on January 6. This protest was filed January 13 and later supplemented to cover the protester's views concerning a subsequent debriefing. On January 23, the Air Force determined pursuant to 31 U.S.C. § 3553(d)(2)(A)(i) (Supp. IV 1986) that continued contract performance notwithstanding the protest was in the best interests of the government.

PROTEST AND ANALYSIS

The protester raises a number of objections which fall into four broad categories--(1) the technical evaluation was improper, (2) the price/cost evaluation was defective, (3) the source selection decision was erroneous and lacked adequate justification, and (4) the agency was biased against SPEC's proposal.^{1/}

1. Technical Evaluation

In the supplement to its initial protest, SPEC challenged the agency's technical evaluation with respect to 12 individual subfactors. The agency report responded to each of these challenges in detail; yet, in the protester's comments on that report, SPEC only replied to the Air Force's position regarding the evaluation under the technical subcategory of reliability and to the protester's proposed use of an "associate staff" concept in meeting some of the personnel requirements of the RFP. Thus, with the exception of these two issues, which are discussed below, we consider the remainder of SPEC's challenges to the technical evaluation to be abandoned and we will not consider them. XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75.

a. Reliability

SPEC's proposal received a yellow--or marginal--rating under the technical subcategory of reliability which involved a requirement that offerors provide "availability figures" for similar computer systems that they had produced. As we understand it, these figures are intended to indicate what percentage of time the hardware and software comprising the system are operational, i.e., "available." The record of the evaluation contains a finding that SPEC did not provide these figures for a system that it had produced or fielded--data which the evaluators concluded was necessary to determine an offeror's capability of keeping a system

^{1/} The protester has challenged the Air Force's decision to continue performance during the pendency of this protest. Since the agency has informed us of its written determination to go forward with performance, it has complied with its statutory obligation. National Medical Diagnostics, Inc., B-232238, Dec. 2, 1988, 88-2 CPD ¶ 553. The protester points out that the agency failed to provide it with notice of its decision pursuant to Federal Acquisition Regulation § 33.104(d). While this omission does not impact the legality of the award, the agency should in the future comply with this requirement.

operational. SPEC did provide availability information regarding one of its supplier's systems as well as a comparatively favorable analysis of that system to its competitors' system which the protester maintains the government initially accepted without question. According to the agency, when it sought verification of the system data provided by the protester directly from SPEC's supplier, it was refused. Finally, it also appears that during discussions SPEC challenged the agency's requirement for field data as being inherently less reliable than mathematically extrapolated data prepared and offered by the protester.

The protester alleges that the Air Force's conclusions with regard to the lack of reliability of its proposed system are without a rational basis since the agency, in effect, ignored the reliability data which it provided--data which the protester submits is superior to that required by the RFP and which, it is argued, establishes that its proposed system is superior to Comsystems'. SPEC also disputes the agency's account of a direct contact with its supplier to obtain data verification and objects to such an effort.

Where an agency evaluation is challenged, we will examine that evaluation to insure that it was reasonable and consistent with the evaluation criteria. The determination of the relative merits of a proposal is primarily a matter of administrative discretion which we will not disturb unless it is shown to be unreasonable. Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85. This is not accomplished by the protester's mere disagreement with the agency's judgment. Systems & Processes Engineering Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ 478.

Here, the protester has at best established that there is a continuing disagreement about what type of reliability data should have been accepted by the agency. In this regard, SPEC has not shown that the agency acted unreasonably in rejecting the data it chose to submit in lieu of field data required by the RFP. On the contrary, we believe that the Air Force acted reasonably in concluding that SPEC's proposal was marginal under the reliability subfactor because the data it supplied covered only hardware and ignored the application software components of the system, and because the limited amount of data that was provided for its supplier's equipment amounted to a prediction based on unverified information. This conclusion, which remained substantially unaddressed in the protester's comments on the agency report, does not indicate that the Air Force ignored the data submitted by SPEC as is alleged; rather, it demonstrates that the data was considered by the evaluators

and reasonably determined to be insufficient for the purpose of ascertaining whether SPEC could field an entire system that was reliable.

Moreover, the inclusion of the protester in the competitive range for further discussion did not, as SPEC argues, mean that the agency accepted all of the technical representations contained in its initial proposal; rather, it merely indicated that the agency believed that its proposal was susceptible to being made acceptable. See Federal Acquisition Regulation (FAR) § 15.609. We note that a specific DR was issued indicating that SPEC had not provided the reliability data the agency required. Also, SPEC's complaints about the agency directly contacting its supplier are without merit; such contacts were not precluded by the RFP and appear to have been an attempt to make acceptable data which was otherwise not usable. See Systems & Processes Engineering Corp., B-232100, supra. Finally, to the extent that SPEC is now objecting to the RFP requirement for data for offeror-produced systems, its protest is untimely because such objections should have been raised prior to the RFP closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

b. Associate Staff

With regard to a number of technical and management subcategories for which personnel resources were to be evaluated, SPEC relied on a concept it called "associate staff." As the protester describes it, the concept would enable SPEC to move personnel to full-time status immediately upon contract award and, when such staff is not required, it would enable the firm to maintain a lower overhead rate structure with savings passed on to the Air Force through its lower price.

The agency's position is, in essence, that SPEC's reliance on the associate staff concept standing alone without further guarantees of employability or even resumes presented a performance risk to the government, and that SPEC's proposal was properly downgraded.

SPEC objects to this alleging chiefly that employment guaranties were not required by the RFP, and argues that the evaluation discriminated against small businesses with small staffs such as itself.

The evaluation record nowhere indicates that SPEC's proposal was found to be unacceptable solely for proposing the use of associate staff. (With the exception of a marginal rating for its program management plan because the protester

failed to provide a training and hiring plan and because it failed to adequately describe its corporate experience, SPEC received an acceptable--green--rating for all personnel-related evaluation subfactors.) The evaluators did assign a degree of risk to its proposal for failing to provide resumes or evidence of employability for its associate staff--a group of persons admittedly not in its full-time employ and whose precise relationship to the firm was not specifically described. While it is true that commitment guaranties were not specifically required by the RFP, resumes or qualification statements were in a number of cases--a matter underlined by the agency in its report, but left unaddressed by the protester in its comments.

Under the circumstances, we find no reason to object to the Air Force's actions in concluding that there were risks associated with SPEC's proposal because of its staffing concept since the RFP put offerors on notice that the qualifications of their proposed personnel would be evaluated. The protester's rather vague references to its associate staff themselves created a reasonable doubt about their precise status and degree of commitment to the firm and the agency thus acted reasonably in considering this fact in its evaluation. Comarco, Inc., B-225504 et al., Mar. 18, 1987, 87-1 CPD ¶ 305. In view of this conclusion, we simply see no basis for SPEC's contention that the evaluation of its staffing proposal was indicative of an agency bias against small business. In this regard, it is clearly reasonable for an agency to credit a firm more highly for staff that is in its full employ. Finally, in the absence of a set-aside for small business, there is no legal basis for considering SPEC's status as a small business in the evaluation of its offer. ICSD Corp., B-222478, July 7, 1986, 86-2 CPD ¶ 37.

2. Price/Cost Evaluation

SPEC's final proposed price of \$ 11,387,918 represented a significant decrease from its initial proposal which, according to the agency, had been clustered with the others received at about \$14 million. The revised price contained a drop in "fee" from 9.3 percent to 4.6 percent, which the Air Force interpreted as a reduction in profit margin. In briefing the SSA on December 16, the evaluators reported:

"Of the four remaining contractors [SPEC] had the lowest evaluation based on technical and management aspects of their proposal as well as the lowest price. [SPEC] presented a reasonable amount of risk in their original proposal, however, this risk was greatly magnified in the BAFO. In an apparent

attempt to 'buy in' [SPEC] reduced their profit to 4.6% and overall price by 15%. Rationale for the reduction was not provided in adequate detail. The risks inherent in the reduction of software costs more than offset the potential savings resulting from the cost reduction. [SPEC's] revised proposal allows for an absolute minimum margin of error. This is an unacceptable risk for the Air Force for an inferior technical proposal."

According to the Air Force, the reduced BAFO price was considered unrealistic and unreasonable because, despite certain claimed savings as the result of supplier discounts, other technical changes in the BAFO indicated that the protester would likely incur offsetting cost increases--matters which were not, in the agency's view, adequately explained in the BAFO. Thus, the Air Force concluded that these unexplained and major price reductions presented no room for error and, therefore, presented an unacceptable performance risk. Finally, in the agency report the Air Force states that the final price/cost proposal was indicative of the protester's failure to comprehend the complexity of the RFP's technical requirements.

The protester responds by arguing that the BAFO changes were adequately explained, primarily by reference to certain discounts it had been able to negotiate with its major equipment supplier. SPEC also states that the RFP precluded the downgrading or rejection of its proposal for a low price for any reason other than that price not covering the equipment costs--which, according to the protester, is not the case here. The protester also challenges the propriety of the Air Force's conclusion that, by providing for little or no profit margin, its price proposal presented risks to the government in the context of a fixed-price contract where all risk would be on the contractor to perform at a given price. SPEC suggests that the rejection of its proposal for being unreasonably low constitutes a nonresponsibility finding which should have been forwarded to the Small Business Administration (SBA) for certificate of competency (COC) proceedings.

The risk of poor performance when a contractor is forced to provide services at little or no profit is, in general, a legitimate concern in the evaluation of proposals. See Burnside-Ott Aviation Training Center, Inc. et al., B-233113 et al., supra. While "cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract since the contract places upon the contractor the risk and responsibility for loss, agencies may, nonetheless, in their discretion provide for a realism

analysis in the solicitation of fixed-price proposals for such purposes as measuring as the risk inherent in an offeror's approach. Sperry Corp., B-225492 et al., Mar. 25, 1987, 87-1 CPD ¶ 341. In such circumstances, an agency may properly downgrade a BAFO as being technically deficient when it does not contain an adequate explanation of price reductions from a previously acceptable initial proposal and may, where consistent with the terms of the RFP, award to a higher-priced technically superior offeror. Electronic Communications, Inc., B-183677, Jan. 9, 1976, 76-1 CPD ¶ 15. We therefore conclude that the agency could properly downgrade the protester's offer because it concluded that the firm's low fixed-price represented a significant performance risk. It is significant to note in this regard that the failure to select the SPEC proposal was not based solely on a determination that the protester's low price represented a performance risk, but on a combination of factors including its low overall technical rating.

While SPEC disputes part of the analysis of its price by reiterating that it informed the Air Force in its BAFO of cost reductions resulting from lower prices from its supplier, the protester leaves largely unaddressed the agency's conclusions that offsetting increases in cost could have reasonably been expected as the result of other changes reflected in its BAFO. As to the protester's argument that language contained in the RFP indicating that prices below the cost of required equipment would be considered unrealistically low limited the agency solely to that consideration when evaluating the reasonableness of an offeror's price, we note that the RFP contains other references to price reasonableness and realism which do not limit the consideration of price reasonableness. We conclude, therefore, the RFP contemplated that a variety of other circumstances could support a determination that an offeror's low prices presented a performance risk.

Further, since the evaluation of SPEC's price proposal occurred in the context of an otherwise proper technical evaluation in consonance with the factors set forth in the RFP, even though the factors are traditionally viewed as bearing on responsibility, there was no requirement for a referral to SBA for a COC. Wickman Spacecraft & Propulsion Co., B-219675, Dec. 20, 1985, 85-2 CPD ¶ 690.

3. Source Selection Decision

SPEC argues that the SSA's decision lacked sufficient justification. The protester complains that the decision did not analyze the proposals against the evaluation criteria and that, in two instances, the SSA went beyond

these criteria in selecting Comsystems. The protester also argues that the SSA's decision document failed to adequately justify an award to the higher-priced offeror. Finally, SPEC suggests that the selection was improper because the SSA did not personally review the proposals.

The government is not required to make award to a technically acceptable firm offering the lowest price under an RFP unless the RFP specifies that price will be the determinative factor. We have upheld awards to technically superior, higher-priced offerors where the record shows that the offeror's price premium was justified in light of its technical superiority. Our role is to determine whether the selection decision is rationally based. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

In concluding that Comsystems provided the best overall value to the government, the SSA in his determination specifically stated that he considered the awardee's technical superiority under five criteria of the evaluation criteria listed in the RFP. Moreover, the SSA's conclusions with regard to these areas are consistent with the in-depth technical briefing presented to him by the agency's evaluators which reflected their extensive evaluation of all the proposals and in which both prices and technical/management ratings were integrated into a final ranking of the offerors. Comsystems' comparative technical superiority and low risk were mentioned throughout the analysis as supporting its top ranking, and both of these factors were mentioned by the SSA in his decision document.

SPEC argues that the selection was improper because Comsystems received improper credit in the SSA's decision for two features in its proposal which were not set forth as features which would be evaluated. These features were an around-the-clock response center and a preproposal demonstration of certain compatibilities between its hardware and software. While we agree with the protester that these features were not specifically set forth as RFP requirements, we think they were properly considered. In making a selection decision, the selecting official may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Unidynamics/St. Louis, Inc., B-232295, supra. The response center portion of the awardee's proposal was directly encompassed by and logically related to the subfactors of reliability, maintainability and system support; moreover, while the compatibility demonstration was not specifically required by the RFP, it is nonetheless logically encompassed within the technical subfactor relating to software development.

The fact that the SSA did not set aside a specific portion of his decision document to discuss the cost/technical tradeoff inherent in awarding to Comsystems does not indicate that his decision lacked a reasonable basis in this regard. Unidynamics/St. Louis, Inc., B-232295, supra. In fact, the source selection decision document specifically notes that Comsystems' price was not the lowest received and later concludes that its technical superiority and low risk made it the best value to the government. On the other hand, the SSA specifically concluded that SPEC's lowest-priced proposal was inferior to Comsystems' technically and presented a greater degree of risk. Both of these conclusions are underpinned by the evaluation record; thus, there is no basis to conclude that the SSA was without justification in making his selection decision.

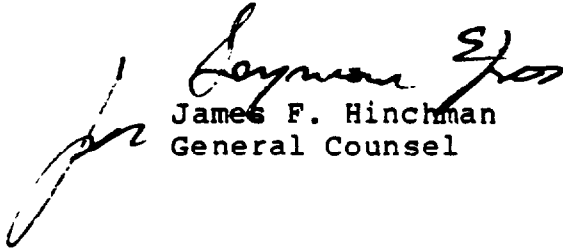
Finally, we do not agree with the protester's suggestion that the RFP required the SSA to personally review the proposals because it stated that he would determine their overall value to the government. There is no requirement for a personal examination of the proposals by the SSA and logically there is nothing to preclude him from making a determination of greatest value based on a briefing which presented the results of an extensive proposal evaluation.

4. Alleged Bias

As evidence of bias on the Air Force's part, the protester suggests that officials may have been influenced by the alleged employment by Comsystems of an Air Force official. SPEC also suggests that the system of assigning letters to designate contractors during the evaluation process was inadequate protection against an agency bias in favor of large business since the identity of Comsystems was evident from certain references in the evaluation documents. As further "evidence" of bias, the protester criticizes the agency's use of what it characterizes as strident language in describing its proposal. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition. Since our review of the record indicates that the evaluation and selection was reasonable, we think that the protester's

suggestions of agency bias amount to nothing more than these. Systems & Processes Engineering Corp., B-232100, supra.

The protest is denied.



James F. Hinchman
General Counsel